

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 285 of 2001

with

APPEAL FROM ORDER No 286 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NANDI CYLINDERS LTD.

Versus

ESSAR STEEL LIMITED

Appearance:

1. Appeal from Order No. 285 of 2001
M/S.VYAS ASSOCIATES for Petitioners No. 1-3
MR RC KAKKAD for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 07/11/2001

COMMON ORAL JUDGEMENT

Both these Appeals from Orders are disposed of by this common order as the common question of law is involved in these matters.

The Appeal from Order No.285/01 is arising out of the impugned order passed by the trial court in Special Civil Suit No.497/00 and Appeal from Order No.286/01 is arising out of the impugned order passed by the trial court in the Special Civil Suit No.486/00. Special Civil Suit No.497/00 is filed by the respondent-plaintiff for recovering Rs.27,25,793.47 and Civil Suit No.486/00 filed for recovering Rs.61,92,528.48. Injunction applications Ex.5 were partly allowed in both the suits and the appellants-defendants were directed to furnish solvent surety of Rs.27,50,000/= and Rs.61,92,528.28 within one month from the date of the order i.e. 2.7.2001 failing which it was ordered that the properties mentioned in para 11/12 of the applications Ex.5 be taken into attachment. Both these impugned orders which are passed below Ex.5 are challenged in these appeals.

Having carefully gone through the impugned order passed in both the cases it clearly appears that the learned Trial Judge decided applications Ex.5 without written statement filed in the Special Civil Suit or reply filed to the applications Ex.5. It is true that on earlier occasion in appeals from orders filed by the present appellants below Ex.5 in both the cases, without entering into merits of the case, the orders passed below Ex.5 were set aside and the appellants were directed to file reply to Ex.5 in both the cases within 10 days from the date of the order i.e. 27.12.2000 and rejoinder, if any, filed within a week thereafter and the Trial Court was directed to decide the applications Ex.5 on or before 5.2.2001 and till then the appellants were directed to maintain status quo with respect to the properties mentioned at Ex.5.

In spite of the aforesaid directions, the appellants failed to file reply to Ex.5 in both the matters, therefore, the learned trial Judge decided application Ex.5 by impugned order dated 2.7.2001.

Learned counsel Shri Kakkad for the respondents-original plaintiffs vehemently submitted that when the defendants were given sufficient opportunity by this court as well as the trial court to file the reply and if they fail to avail that opportunity then this court should not interfere with such discretionary orders passed by the trial court in these appeals. It is true

that the appellants-original defendants failed to file reply within prescribed time limit but that itself would not be a ground to dismiss their appeals because though the trial court was directed to dispose of applications Ex.5 latest by 5.2.2001, the trial court itself took more than 5 months time in deciding both the applications and they came to be decided only on 2.7.2001.

Substantial justice is required to be done and in my considered opinion no harm would be caused if one more opportunity is given to the appellants. On the statement made by learned counsel Shri Vyas at the Bar that the appellants after obtaining interim relief from this court on Civil Application filed in these appeals they have not sold immovable properties to anyone else and if this court directs the trial court to decide applications Ex.5 after giving them an opportunity of submitting reply to application Ex.5 then till then they will not transfer the immovable properties and they will file appropriate undertaking to that effect before the trial court.

In view of the above, the impugned order passed below Ex.5 in both the suits are hereby quashed and set aside. The appellants-original defendants have already filed written statements with a prayer to take them on record. However, if the appellants-defendants are so advised then they can file reply in both the applications Ex.5 before the trial court on or before 30.11.2001. If the respondents-plaintiffs want to file rejoinder to the reply, they may do so within fortnight from the date of filing of the reply. The trial court shall hear and decide both the applications Ex.5 latest by 15.1.2002 without being influenced by the impugned orders passed below Ex.5 on 2.7.2001. Till then, the appellants shall maintain status quo with respect to the immovable properties stated in applications Ex.5. In addition to that the appellants shall also file appropriate undertaking to that effect before the trial court latest by 30.11.2001.

(B.J.Shethna, J.)

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